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In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1126

LOCAL UNION 396, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, ET AL., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-8) is reported at 509 F.2d 1075. The Board's decision and order (Pet. App. 8-39) are reported at 203 NLRB No. 799.

JURISDICTION

The judgment of the court of appeals was entered on January 22, 1975. The petition for a writ of certiorari was filed on March 8, 1975. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, having found that the union had refused to process the grievances of nine employees because they were not members of the union and had filed unfair labor practice charges with the Board, the Board properly ordered the union to submit those grievances to arbitration.

STATUTE INVOLVED

The relevant portions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*), are set forth in the appendix to the petition (Pet. App. 40-41).

STATEMENT

A. The Board's Findings of Fact

1. United Parcel Service (the Company) delivers packages and merchandise for stores and other businesses. It maintains 22 Package Centers in its Metro Los Angeles District ("Metro District") and 21 Package Centers in its South California District ("South District").[1] Each center serves a specific geographical area. Package drivers operating from each center make pickups and deliveries in panel trucks. (Pet. App. 15.) The Package Centers are supplied from eight feeder driver[2] locations. All feeder drivers serving the Metro District are stationed at the Soto Street Hub. (*Id.* at 16.)

Since at least 1940, the employees in these districts have been represented, in a single bargaining unit, by ten local Teamsters unions, including Local 396 (*id.* at 15). Although they negotiate a single contract, each local union administers the contract and handles grievances within its terri-

[1]Prior to July 1969, both of these districts comprised the single South California District (Pet. App. 15).

[2]Feeder drivers operate heavy-duty highway tractors, pulling two box trailers. Each feeder driver has a regularly prescribed run (feeder path). All have received special training and most have been promoted from the ranks of the package drivers (Pet. App. 16).

torial jurisdiction without the participation of the other locals (*id.* at 19, 33). The jurisdiction of Local 396 corresponds roughly with the Metro District (*id.* at 15).

The 1970-1972 contract provided (*id.* at 4, 16, 18):

> SECTION 11. Feeder Drivers. It is agreed that there shall be a separate seniority list for regular feeder drivers, and those employees presently employed as regular feeder drivers shall retain their seniority in this classification. When additional openings occur in this classification, these may be filled by employees from the bargaining unit who qualify for this work, but these employees shall be placed at the bottom of the feeder driver seniority list. In the event of a reduction in force, feeder drivers may return to their former position and retain their full seniority. Employees desiring to qualify for feeder driver work shall indicate this desire. The names of those employees who are qualified by the Company for feeder driver work shall be placed on a list in seniority order. All vacancies in this classification shall be filled from this list. * * *

The contract also provided the following "rules for bidding" (*id.* at 18):

> Local 396 feeder paths will be posted for bid the first week of February 1971, and the first week of February 1972. The feeder driver with the most seniority shall have the first bid. The feeder driver with the second most seniority shall have the second bid and so forth.
>
> The Company shall have the option of placing a member of 396 on all new feeder paths that may be put on between bidding time. This new feeder path, if still in existence, shall be put on the board at bidding time. Feeder drivers in the outlying areas shall bid for feeder paths in their own area.

For example:

San Diego drivers will bid in San Diego.

Santa Barbara drivers will bid in Santa Barbara and so forth.

The Company will post a Feeder Driver seniority list on the board in each area.[3]

All contracts since 1966 have contained a "Settlement of Controversies" clause, which provides for binding arbitration of any "controversy, dispute or disagreement" in the event that the parties are unable to "settle all differences" (*id.* at 18-19).

7. Eddie Harrison, hired by the Company in 1956, became a feeder driver at the Soto Hub in Los Angeles some time before 1968. During 1968, he was transferred to Santa Barbara, retaining his original feeder driver seniority, and changed his membership from Local 396 to Local 186. In November 1971, Metro District Manager Buckridge informed Frank Matula, secretary-treasurer of Local 396, that the Santa Barbara run was being eliminated and that Harrison was being transferred to Soto as a feeder driver. Shortly after Harrison was transferred back to Los Angeles, Matula told him that he had no seniority there. Thereafter, Harrison told the Local 396 steward that he wanted to take up the matter of his seniority with the Teamsters Joint Council, but the steward said that he first would have to discuss it with Matula. When Harrison again saw Matula two weeks later, Matula reiterated that, having come from Santa Barbara, Harrison had no seniority (*id.* at 22-23). Matula added (*id.* at 23):

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[3]In prior contracts, one seniority list was maintained for all feeder drivers in the region. No adjustments in seniority were necessary when a feeder driver was transferred from one district to another, or when the driver bid unsuccessfully for any run in the region (Pet. App. 17-18).

> Well, I tell you what, when you become a member of 396, I will fight for you and I and Buckridge will sit down and talk about this.

On the feeder driver seniority list, posted at Soto in August 1972, Harrison's name was 38th and his seniority date was shown as November 22, 1971—the date of his transfer back to Los Angeles (*ibid.*).[4]

3. On January 12, 1972, the Company informed Local 186 that, on January 24, it was to transfer equipment from Santa Barbara to Los Angeles. On January 17, Martin Fry, business agent for Local 186, called Metro District Manager Buckridge regarding the seniority of the transferring drivers, and "Buckridge stated that, as to the application of seniority he would do as the local union in that area involved requested (in this case, Local 396)" (*id.* at 23). On February 3, at the request of Fry, Teamsters Joint Council 42 met in Palm Springs, California, all locals that were parties to the contract being represented except Local 396 (*id.* at 25-26). Those present voted unanimously that (*id.* at 26):

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[4]Paul Montgomery, who remained a member of Local 396, became a feeder driver in the Soto Hub in Los Angeles on September 16, 1968, and thereafter was transferred to Costa Mesa in the South District. In the spring of 1971 the Company told Montgomery that the point of origin of his run was being moved and that he would no longer have a job. Montgomery protested that under Section 11 of the contract he should revert to his former position as a feeder driver in Los Angeles, and he obtained the assistance of the Local 396 business agent, Carl Lindeman, in effecting his transfer. When Montgomery was transferred back to the Soto Hub, the Company informed him that he would go to the bottom of the seniority list there. Montgomery again obtained Lindeman's assistance, and, when a revised seniority list was posted at Soto, Montgomery was included at about the sixteenth position with a seniority date of September 16, 1968—the date he originally became a feeder driver. (Pet. App. 21-22.)

> when a man transfers at the request of the company and takes his work with him, * * * he should be dovetailed on the seniority list where he is redomiciled.[5]

Meanwhile, on January 24, seven feeder drivers were transferred from Santa Barbara to Los Angeles. Early in February, the Company posted both the list of feeder runs open for bidding and the seniority list at Soto. The Santa Barbara transferees were at the bottom of the seniority list, all being assigned the seniority date of January 24, 1972—the date of their transfer to Los Angeles (*id.* at 25, 26).

On February 16, two of the seven, Russell Breton and Eugene Saddler, met with Matula and Local 396 steward Carr in Matula's office. When Breton asked why they were not getting seniority at Los Angeles, Matula said it was because they "were not members of 396 and he wasn't going to let any of the outlying locals dovetail the seniority in on his boys." (*Id.* at 26-27.) Asked if he was aware of the Joint Council's action in favor of dovetailing, Matula responded that "he didn't give a damn what they did" (*id.* at 27). When Breton suggested that the "only chance we have is to go to the Labor Board," Matula retorted (*id.* at 28):

> If you go to the Labor Board, I will not represent you in my Local. I will refuse your Local dues. Therefore, you will have no representation down here in L.A. County.

Nevertheless, Breton and Saddler filed an unfair labor practice charge with the Board's Regional Office (*id.* at 28).

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[5] *I.e.*, the drivers should retain their original seniority dates (Pet. App. 26).

On March 6, nine Santa Barbara transferees[6] filed a "grievance report" with Local 396 alleging that they were "denied their seniority in bidding the posted runs," and asking for "full seniority" and back pay (*id.* at 30). About April 1, Breton telephoned Local 396 business agent Carl Lindeman to inquire about the grievance. Lindeman said (*id.* at 31):

> We are not filing the grievance because you went to the Labor Board. We have it on file and I am waiting to see what the outcome is.

B. The Board's Conclusions and Order

The Board found that Local 396 and Matula violated Section 8(b)(1)(A) of the Act by denying Harrison, Breton, and Saddler the same representation the Union accorded other Company employees within its jurisdiction because they were not members of Local 396 (Pet. App. 34). The Board further found that Local 396 violated Section 8(b)(1)(A) by failing to process the formal grievances of the nine Santa Barbara employees because they had filed an unfair labor practice charge against the Union (*id.* at 34-35).

The Board ordered the Union, *inter alia*, to proceed promptly to arbitration over the propriety of the seniority dates assigned to the nine transferred employees, to permit those employees to have their own counsel at the arbitration proceeding, and to pay the reasonable fees of such counsel (*id.* at 10, 38). Concerning the arbitral requirement, the administrative law judge, whose decision was adopted by the Board, explained (*id.* at 35-36; footnotes omitted):

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[6]Harrison (see pp. 4-5, *supra*), the seven drivers already referred to (see p. 6, *supra*) and Dan Dwyer (Pet. App. 30).

Local 396 and Matula are required by statute to give equal, fair and impartial representation to three groups of employees with sharply conflicting interests. These are (1) Feeder drivers with established seniority in the Metro Los Angeles District, (2) Package drivers in the Metro Los Angeles District who qualify for feeder driver positions and (3) Feeder drivers with established seniority in the South California District who were transferred by UPS to the Metro Los Angeles District. Each group has a plausible seniority claim under the specific terms of the collective bargaining agreement. While the Board may, in passing upon complaints of unfair labor practices, and determining remedies therefor, construe the provisions of collective bargaining contracts, there is here no necessity for the exercise of this function. The gravamen of Respondents' offense is their failure and refusal, for unlawful reasons, to process the grievance of one group of represented employees. This failure can and must be remedied by resort to the arbitration process. I shall, therefore, recommend that the Respondents Matula and Local 396 be ordered to take the grievance of the complainants herein to arbitration. Since the said Respondents have prejudged the case, it will also be recommended that said Respondents be required to furnish the said complainants with reasonable legal fees and to allow them to have their own counsel at the arbitration proceeding.[7]

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[7]The Board confined this liability to the Union (Pet. App. 9, n. 3).

C. The Decision of the Court of Appeals

The court of appeals upheld the Board's decision and enforced its order, with a modification not here relevant.[8]

The court stated (Pet. App. 3-4):

> [Petitioners'] * * * attack is focused on those portions of the Board's order involving arbitration. They argue that under the terms of the 1970-72 labor agreement, the aggrieved employees have no plausible seniority claim; therefore, the Union's failure to process the grievances was not a breach of its duty of fair representation, and even if the failure were a breach, requiring arbitration of frivolous claims is an unwarranted exercise of the Board's remedial powers.
>
> The crisp disposition of the Union's contentions is that the grievances were not frivolous. The question whether these employees were entitled to be dovetailed turns on the construction and application of some ambiguous provisions of the 1970-72 labor agreement.

Referring to Section 11 of the agreement (p. 3, *supra*), the court added (*id.* at 4-5):

> Transfer of these employees was due to "a reduction in force"; therefore, they "may return to their former position and retain full seniority." The definition of "former position," in the light of the history of the development of seniority

[8]The court of appeals remanded the case to the Board to assess whether the nine employees might properly be represented by para-professionals or a single attorney (*id.* at 7-8). The Board has not challenged the remand.

lists for feeder drivers in the region, and the proper application of the correct standard to the differing employment histories of the drivers are far from clear. The development of multiple feeder driver seniority lists from the single list system, the negotiations preceding the 1970-72 contract, and the conduct of the Company and the Union under the contract [cast serious doubt upon the Union's contention that the contract] unequivocally foreclosed dovetailing of transferred employees. The Board's conclusion that the grievances were plausible is supported by the record.[9]

ARGUMENT

The question posed in the petition (Pet. 2)—whether the Board properly may order arbitration "without an evidentiary finding of probable merit of the grievance"—is not presented on this record. Here the Board found that the grievants' claim that the contract required dovetailing was as plausible as the contrary claim urged by the Union, and the court of appeals upheld the Board's finding as "supported by the record."[10]

In any event, petitioners err in contending (Pet. 5) that, where a union has wrongfully refused to process a grievance, the Board's previous policy has been merely to order the union to consider the grievance.

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[9]The bracketed language was inadvertently omitted from the reproduction of the opinion in the appendix to the petition.

[10]There is no substance to petitioners' contention that the court of appeals improperly made a finding that the Board had not made by interpreting the contract (Pet. 9). Like the Board, the court merely concluded that the grievants' claim was "plausible," not that it was correct.

Where a union has violated its statutory duty of fair representation in the handling of grievances, the Board has required the union to take the grievances to arbitration where "the record establishes that that step is essential to assure the [employees] * * * an impartial resolution of the merit of their grievances." *Local 12, United Rubber Workers*, 150 NLRB 312, 322, enforced, 368 F. 2d 12, 24-25 (C.A. 5), certiorari denied, 389 U.S. 837. An order requiring arbitration was particularly appropriate here in light of the Board's finding that the Union had "prejudged the case" (p. 8, *supra*) and the fact that the contractual "settlement of controversies" clause provides no formal grievance machinery except arbitration.[11]

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[11]In relevant part, the clause reads (Pet App. 18-19, G.C. Exh. 4, p. 26):

> Should a controversy, dispute or disagreement arise during the period of this Agreement, there shall be no cessation or stoppage of work authorized by the Union, and the Union will do its utmost to see that work is continued in a normal and orderly way, and said controversy, dispute or disagreement shall be adjusted in the following manner: each of the parties shall make an earnest attempt to settle all differences, but in the event they fail to settle such differences a Board of Arbitration shall be appointed consisting of two (2) representatives of each party hereto and an additional member who shall be a disinterested party to be selected by the representatives of the parties hereto. The majority decision of such Board shall be final, binding and conclusive.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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MAY 1975.